

## Message Text

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PAGE 01 RABAT 00415 01 OF 04 211700Z  
ACTION NEA-10

INFO OCT-01 ISO-00 EB-08 XMB-04 TRSE-00 L-03 PM-04 DODE-00  
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-----211751Z 129879 /43

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TO USDOC WASHDC  
INFO SECSTATE WASHDC 816  
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UNCLAS SECTION 1 OF 4 RABAT 0415

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PAGE 02 RABAT 00415 01 OF 04 211700Z

TAGS: BENC BGEN MO  
SUBJECT: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES

FOR CAGNE

REF: STATE A-5955

1. FOLLOWING IS REQUESTED INFO CONCERNING CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES IN MOROCCO. REPORT ATTEMPTS TO ANSWER QUESTIONS MOST LIKELY TO BE ASKED BY U.S. FIRMS IN MAJOR PROJECTS AND EQUIPMENT SALES IN MOROCCO. HOPE INFO WILL BE HELPFUL TO USDOC/CAGNE IN FORMULATING COUNTRY INFO SHEET.

2. PRICE. IN GENERAL, RULE IS FOR FIXED PRICE BIDS. GOM DOES NOT ACCEPT "ESCALATION CLAUSES" UNLESS CONVINCED THAT THERE WILL BE NO BIDS ON FIXED PRICE BASIS.

POST DOES NOT KNOW OF SPECIFIC INSTANCES IN WHICH ESCALATION CLAUSES HAVE BEEN NEGOTIATED AND ON BASIS EXPERIENCE ESTIMATES THERE IS LITTLE OPPORTUNITY FOR COST PLUS FEE CONTRACTS.

THERE HAVE, HOWEVER, BEEN INSTANCES OF GUARANTEEING PRICE OF A COMMODITY FOR DURATION OF A CONTRACT. FOR EXAMPLE, THIS IS CASE FOR CONSTRUCTION OF DAMS. PRICE OF CEMENT IS FIXED BY THE GOM AND IS GUARANTEED TO CONTRACTORS FOR DURATION OF PROJECTS.

AS FOR DEMURRAGE, THERE ARE NO PROVISIONS MADE FOR DEMURRAGE OR ESCALATION OF DEMURRAGE.

PARTS PRICE ESCALATION CLAUSE MAY POSSIBLY BE PERMITTED IN EVENT PARTS SUPPLY PROVISION EXTENDING OVER LONG PERIOD. GENERALLY, PARTS SUPPLY IS INCLUDED IN EQUIPMENT SUPPLY. PARTS SUPPLY OVER LONG PERIOD IS NOT CUSTOMARY IN MOROCCO.

PRACTICE IN PRIVATE SECTOR DIFFERS FROM PUBLIC SECTOR IN THAT PRIVATE SECTOR DOES NOT FOLLOW STRICT RULES. CONTRACT CONDITIONS ARE FREELY NEGOTIATED. AS PAYMENTS OF FOREIGN EXCHANGE MUST BE APPROVED BY THE EXCHANGE CONTROL OFFICE, UNCLASSIFIED

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PAGE 03 RABAT 00415 01 OF 04 211700Z

CONTRACTS WITH PRIVATE SECTOR MUST, HOWEVER, BE APPROVED BY APPROPRIATE AUTHORITIES BEFORE BECOMING VALID.

3. BID AND PERFORMANCE BONDS. BID BONDS AND PERFORMANCE BONDS MUST BE PAID IN CASH OR THROUGH BANK GUARANTEES. BID BONDS VARY BETWEEN 1.5 AND 3 PERCENT. PERFORMANCE BONDS VARY FROM 3 TO 5 PERCENT. BID AND PERFORMANCE BONDS ARE NOT UNIFORM AMONG ALL CONTRACTING AGENCIES OF GOVERNMENT.

GENERALLY, NEGOTIATING AMOUNTS DOWNWARD IS POSSIBLE ONLY IN SPECIAL CASES WHERE BIDDER HOLDS STRONG POSITION.

REQUIREMENTS FOR BONDS OR GUARANTEES ARE FIXED BEFOREHAND IN TENDER DOCUMENTS.

BID AND PERFORMANCE BONDS REQUIREMENTS ARE NOT REDUCED WHEN CONTRACTOR IS IN JOINT VENTURE WITH LOCAL PARTNER. THERE ARE NO RULES GOVERNING JOINT VENTURES. IMPORTED MACHINERY AND EQUIPMENT CANNOT BE CONSIDERED AS AN OFFSET AGAINST BONDS.

SURETY BONDS ARE NOT EMPLOYED IN MOROCCO.

4. FORCE MAJEURE. FORCE MAJEURE IS CUSTOMARILY INCLUDED

IN TENDER CONDITIONS WITH DEFINITION BEING NEGOTIABLE.  
NEITHER LABOR DISPUTES OR DELIVERY DELAYS DUE TO PORT  
CONGESTION ARE CONSIDERED CIRCUMSTANCE OF FORCE MAJEURE.  
THERE IS SCOPE FOR NEGOTIATING LANGUAGE OF FORCE  
MAJEURE CLAUSES IN MAJOR CONTRACTS, WHEN SPECIAL  
CIRCUMSTANCE CALLS FOR IT.

5. TRAINING. TENDERS FOR COMPLICATED EQUIPMENT USUALLY PROVIDE  
FOR TRAINING OF LOCAL PERSONNEL ON THE SPOT. ONLY IN  
SPECIFIC CASES WILL MEDIUM AND HIGH LEVEL LOCAL  
TECHNICIANS HAVE TO BE TRAINED IN SUPPLIER'S PLANT.  
TRAINING EQUIPMENT CAN BE IMPORTED AND REEXPORTED ON A  
DUTY-FREE BASIS. WHO WILL BEAR COST OF TRAINING IS  
SPECIFIED IN TENDER DOCUMENTS ON CASE BY CASE BASIS.

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PAGE 01 RABAT 00415 02 OF 04 211709Z  
ACTION NEA-10

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-----211750Z 129998 /43

R 211505Z JAN 77  
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TO USDOC WASHDC  
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UNCLAS SECTION 2 OF 4 RABAT 0415

6. FOREIGN AND DOMESTIC WORKERS. CONTRACTORS ARE NOT  
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PAGE 02 RABAT 00415 02 OF 04 211709Z

EXPECTED TO MAINTAIN SPECIFIC BALANCE OF LOCAL LABOR  
VIS-A-VIS FOREIGN LABOR. HOWEVER, IN MOST INSTANCES WHEN  
PROJECT PERMITS, IT IS EXPECTED THAT CONTRACTORS WILL USE,  
TO EXTENT POSSIBLE, LOCAL

- SUB CONTRACTOR SERVICES
- LOCALLY PRODUCED SUPPLIES
- LOCAL LABOR

WHERE QUALITY IS COMPARABLE AND COST NOT HIGHER THAN 10  
PERCENT ABOVE IMPORTED COMMODITIES AND SERVICES.

LOCAL AND THIRD COUNTRY LABOR OF EQUIVALENT TRAINING AND  
EXPERIENCE IS COMPARABLE TO THAT AVAILABLE IN EUROPE, BUT  
TRAINED PERSONNEL ARE IN SHORT SUPPLY.

FRANCE SUPPLIES MOST OF FOREIGN LABOR ON MAJOR PROJECTS  
WITH BASIC LABOR SITUATION AS FOLLOWS:

- UNSKILLED LABOR READILY AVAILABLE
- SEMI-SKILLED LABOR IN ADEQUATE QUANTITIES CAN BE  
LOCATED ONLY WITH SOME DIFFICULTY
- SKILLED LABOR IS SCARCE AND HIGH PAID BY MOROCCAN  
STANDARDS WITH SALARIES BEING ALMOST COMPARABLE WITH THOSE  
OF WESTERN EUROPE.

IN GENERAL, WAGES ARE VARIABLE (COPY OF BROCHURE  
EDITED BY OFFICE OF INDUSTRIAL DEVELOPMENT POUCHED ATTN:  
USDOC/CAVNE).

A GENERAL INCREASE IN SALARIES IS IMMINENT. BASIC HOURLY  
RATE (SMIG) HAS ALREADY BEEN RAISED ABOUT 15 PERCENT.

SUITABLE HOUSING, FOOD, CLOTHING, MEDICAL AND DENTAL CARE,  
AND RECREATIONAL ACTIVITIES ARE AVAILABLE IN LARGE CITIES SUCH  
AS RABAT, CASABLANCA, FES, MARRAKECH, TANGIER, AGADIR. THIS  
IS NOT THE CASE IN TOWNS, VILLAGES AND COUNTRYSIDE. DEPENDING  
ON LOCATION OF PROJECT, CONTRACTOR MAY GRANT EMPLOYEES SPECIAL  
ALLOWANCES OR PROVIDE SOME OF MISSING FACILITIES, ESPECIALLY  
FOR LONG-TERM PROJECTS.

EMPLOYEES WHO ARE BROUGHT INTO COUNTRY ARE SUBJECT TO  
LOCAL INCOME TAXES ONLY IN CASES WHERE THEY ARE CONSIDERED BY  
LAW AS "RESIDENTS", DEFINED AS ALIENS RESIDING IN COUNTRY  
FOR MORE THAN SIX MONTHS. HOWEVER, A DOUBLE TAXATION TREATY  
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PAGE 03 RABAT 00415 02 OF 04 211709Z

IS UNDER NEGOTIATION BETWEEN MOROCCO AND THE U.S. AND HOPEFULLY WILL BE CONCLUDED SOON.

ALTHOUGH EFFECTS ARE NOT SUBJECT TO IMPORT DUTIES, CONTRACTORS SHOULD MAKE IT A POINT TO INCLUDE PROVISIONS FOR THE SUPPLY OF "BON DE FRANCHISE" IN CONTRACTS NEGOTIATED WITH GOVERNMENT AGENCIES.

WORK AND RESIDENCE PERMITS ARE NOT CONSIDERED A PROBLEM FOR EMPLOYEES OF CONTRACTORS PERFORMING GOVERNMENT PROJECTS.

REGARDING PAYMENT OF WORK FORCE, ALL PAYMENTS EFFECTED IN MOROCCO MUST BE IN MOROCCAN DIRHAMS WHICH MAY BE OBTAINED BY EXCHANGE OF IMPORTED DOLLARS OR FROM PORTION OF CONTRACT PAID FOR IN DIRHAMS.

SALARIES OF AMERICAN PERSONNEL AND THIRD COUNTRY NATIONALS ARE NEGOTIATED WITH PERCENTAGE PAID ABROAD AND REST IN DIRHAMS.

THERE ARE NO KOREANS, PHILIPPINES, OR PAKISTANI WORKERS IN MOROCCO AS FAR AS WE CAN DETERMINE.

7. ARBITRATION. LAW AND PRACTICE REGARDING MACHINERY FOR SETTLEMENT OF CONTRACT DISPUTES CALLS FOR MOROCCAN COURT ADJUDICATION OR ARBITRATION BY MOROCCAN ORGANIZATIONS. IN RECENT PRACTICES, FOREIGN FIRMS HAVE SUCCEEDED IN NEGOTIATING CLAUSES PROVIDING FOR ARBITRATION BEFORE INTERNATIONAL CHAMBER OF COMMERCE IN PARIS, BUT WITH GOM RECOURSE TO MOROCCAN COURTS IN THE ULTIMATE INSTANCE. IN PRACTICE, MOROCCAN AUTHORITIES AVOID ACCEPTANCE OF INTERNATIONAL ARBITRATION AS MUCH AS POSSIBLE. TO BEST OF OUR KNOWLEDGE, FOREIGN CONTRACTORS HAVE HAD NO EXPERIENCE WITH LOCAL ARBITRATION BODIES.

8. LOCAL AGENTS AND REPRESENTATIVES. LOCAL AGENTS AND REPRESENTATIVES ARE ALLOWED AND RECOMMENDED IN PRIVATE SECTOR, ESPECIALLY IN CASES WHERE COMPLICATED EQUIPMENT SUPPLIES WILL REQUIRE AFTER SALE SERVICE. THEY CAN ALSO BE HELPFUL IN FOLLOWING UP SALES LEADS.

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PAGE 01 RABAT 00415 03 OF 04 211720Z  
ACTION NEA-10

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R 211505Z JAN 77

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UNCLAS SECTION 3 OF 4 RABAT 0415

AGENTS FOR SALES OF MILITARY ITEMS ARE SAID TO BE  
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PAGE 02 RABAT 00415 03 OF 04 211720Z

PROHIBITED, THOUGH EMBASSY HAS NEVER SUCCEEDED IN GETTING  
CHAPTER AND VERSE ON THIS.

AGENTS CONTRACTS ARE NEGOTIATED FREELY WITH NO NORM  
FOR COMMISSIONS FOR FEES.

9. LOCAL PARTNERSHIPS AND CORPORATIONS. PROS AND CONS OF  
ESTABLISHING LOCAL PARTNERSHIP OR CORPORATION DEPEND  
UPON TYPE OF VENTURE. FOR SUPPLY, BEST APPROACH IS PROBABLY  
APPOINTMENT OF AGENT; FOR CONTRACTING ON LARGE SCALE (I.E.,  
ENGINEERING, CONSTRUCTION) JOINT VENTURE WITH  
LOCAL FIRM IS RECOMMENDED. FOR MANUFACTURING, MOROCCAN  
CORPORATION (AS DEFINED BY THE LAW) IS REQUIRED IN MOST  
CASES AND SHOULD BE CONSIDERED EVEN WHERE EXEMPT FROM  
MOROCCANIZATION REQUIREMENTS.

WHOLLY-OWNED CORPORATIONS ARE ACCEPTABLE IN TOURISM,  
MINING, PRODUCTION WHOLLY FOR EXPORT, AND FAIRLY EXTENSIVE  
ARRAY OF INDUSTRIES. MOST SERVICES ARE MOROCCANIZED,

I.E., REQUIRE MINIMUM 50 PERCENT LOCAL EQUITY PLUS LOCAL CONTROL OF BOARD. FOR ALL OTHER ACTIVITIES, OR TO TAKE ADVANTAGE OF TAXATION AND OTHER INCENTIVES OF THE "INVESTMENT CODE", MOROCCAN CORPORATION MUST BE ESTABLISHED.

IN MANUFACTURING SECTOR, EXAMPLES OF JOINT VENTURES INCLUDE GENERAL TIRE AND GOODYEAR. IN SERVICES, BADGER CORPORATION HAS JUST FORMED JOINT VENTURE WITH A SUBSIDIARY OF NATIONAL PHOSPHATE OFFICE (65 PERCENT US/35 PERCENT OCP).

10. GRADUATED OR ADVANCE PAYMENTS. ADVANCE PAYMENTS CAN BE NEGOTIATED FOR SUPPLY CONTRACTS ONLY. CONTRACTS WITH GOVERNMENT AGENCIES REQUIRE NO BANK GUARANTEES. ADVANCE PAYMENTS ARE NOT PERMITTED IN CONSTRUCTION INDUSTRY. PROGRESS PAYMENTS ARE HOWEVER COMMON.

11. LOCAL SUPPLY. LOCAL SUPPLY IS NOT SINE QUA NON CONDITION. HOWEVER, GOM FAVORS CONTRACTORS WHO INCORPORATE LOCAL PRODUCTS AND SOMETIMES REQUESTS INCORPORATION WHERE SEMI-MANUFACTURE OF SIMILAR QUALITY AVAILABLE AND LOCAL UNCLASSIFIED

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PAGE 03 RABAT 00415 03 OF 04 211720Z

PRICE IS NOT MORE THAN 10 PERCENT MORE THAN IMPORTED PRODUCTS. WHERE LOCAL SUPPLY IS INCLUDED IN CONTRACT, GENERAL CONTRACTOR IS SOLELY RESPONSIBLE FOR FULFILLMENT OF CONTRACT WHETHER FROM IMPORTED OR LOCAL SOURCES. ESCALATION, PERFORMANCE BONDS, FORCE MAJEURE, AND OTHER TERMS REMAIN AS IN PARAS 3 AND 4 ABOVE.

12. BONDED AREAS. A FREE TRADE ZONE EXISTS AT TANGIER PORT AND "BONDED AREAS" EXIST AT CASABLANCA PORT.

13. LANGUAGE AND UNITS OF MEASUREMENT. THE PREFERRED LANGUAGE FOR BIDS IS FRENCH. IN SOME INSTANCES, IT IS REQUIRED.

METRIC UNITS OF MEASUREMENT ARE REQUIRED BY LAW.

14. CORPORATE TAXES. IN THE ABSENCE OF A DOUBLE TAXATION TREATY, FOREIGN CONTRACTORS ARE REQUIRED TO PAY FOLLOWING TAXES:

-- SUPPLIERS, NO TAXES LEVIED

-- CONTRACTORS, 10 PERCENT OF PAY FOR SERVICES

MUST BE WITHHELD AT SOURCE

-- MANUFACTURING BY A LOCALLY REGISTERED CORPORATION: SUBJECT TO ALL MOROCCAN TAXES, INCLUDING REGISTRATION, PATENT, CORPORATION TAXES, AND GENERAL INCOME TAXES.

A RECASTING OF MOROCCAN TAXATION SYSTEM HAS JUST BEEN ANNOUNCED AND IS EXPECTED TO BE PUBLISHED BEFORE MID-YEAR.

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PAGE 01 RABAT 00415 04 OF 04 211722Z  
ACTION NEA-10

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R 211505Z JAN 77

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UNCLAS SECTION 4 OF 4 RABAT 0415

15. MACHINERY AND EQUIPMENT. WAIVER OF CUSTOMS DUTIES  
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PAGE 02 RABAT 00415 04 OF 04 211722Z

ON MACHINERY, EQUIPMENT AND SUPPLIES IMPORTED FOR PROJECTS  
CAN BE NEGOTIATED WHERE GOODS ARE TO BE REEXPORTED. LOCAL

SALE OF EQUIPMENT ENTAILS PAYMENT OF CUSTOMS DUTIES  
BASED ON ORIGINAL VALUE.

USED MACHINERY AND EQUIPMENT MAY BE SOLD LOCALLY PROVIDED  
CUSTOMS DUTIES ARE PAID AND AUTHORIZATION FOR IMPORTATION IS  
OBTAINED. THERE IS A GOOD LOCAL MARKET FOR USED EQUIPMENT IN  
GOOD STATE OF REPAIR. WE DO NOT KNOW AND HAVE BEEN UNABLE  
TO FIND OUT WHAT PENALTY, IF ANY, IS IMPOSED FOR  
ABANDONMENT.

SUPPLY OF SPARE PARTS FOR MACHINERY IS NEGOTIATED ON  
CASE BY CASE BASIS.

16. NEGOTIABLE CONTRACT CLAUSES. PRICES, TERMS OF  
PAYMENT AND FINANCING, AFTER-SALE SERVICE, ON THE SPOT  
TRAINING OF PERSONNEL, AND ARBITRATION ARE NEGOTIABLE.

NON-NEGOTIABLE ITEMS INCLUDE CONDITIONS SET BY LAW  
OR DAHIR WITH RESPECT TO TAXATION, EXCHANGE CONTROL AND  
MINIMUM WAGES.MOFFAT

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## Message Attributes

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**To:** COM  
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**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009